

KATHY BAZOIAN PHELPS (State Bar No. 155564)
DIAMOND MCCARTHY LLP
kphelps@diamondmccarthy.com
1999 Avenue of the Stars, Suite 1100
Los Angeles, California 90067-4402
Telephone: (310) 651-2997

Successor Receiver

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN V. BIVONA; SADDLE
RIVER ADVISORS, LLC; SRA
MANAGEMENT ASSOCIATES,
LLC; FRANK GREGORY
MAZZOLA,

Defendants, and

SRA I LLC; SRA II LLC; SRA III
LLC; FELIX INVESTMENTS, LLC;
MICHELE J. MAZZOLA; ANNE
BIVONA; CLEAR SAILING
GROUP IV LLC; CLEAR SAILING
GROUP V LLC,

Relief Defendants.

Case No. 3:16-cv-01386-EMC

**FIFTH INTERIM ADMINISTRATIVE
MOTION FOR AN ORDER PURSUANT TO
LOCAL RULE 7-11 FOR THE APPROVAL
OF FEES AND EXPENSES FOR THE
SUCCESSION RECEIVER, DIAMOND
MCCARTHY LLP, AND SCHINNER &
SHAIN LLP FROM JANUARY 1, 2020
THROUGH MARCH 30, 2020.**

Date: No Hearing Set
Time: No Hearing Set
Judge: Edward M. Chen

I. Relief Requested

Pursuant to Local Rule 7-11, the Receiver seeks approval of compensation in the amount of \$75,058.00¹ for services rendered from January 1, 2020 through March 30, 2020 (“Motion Period”),

¹ The Receiver has agreed to a holdback of 20% of this amount, and thus seeks payment of \$60,046.80 at this time.

1 and reimbursement of expenses in the amount of \$145.00. Diamond McCarthy, LLP, general counsel
 2 to the Receiver, seeks compensation in the amount of \$32,454.00 ² for services rendered during the
 3 Motion Period, and reimbursement of expenses in the amount of \$169.43. Schinner and Shain LLP
 4 (“Schinner”), securities counsel to the Receiver, seeks \$2,450.00 in compensation for the Motion
 5 Period and reimbursement of expenses in the amount of \$622.06. This Motion is supported by the
 6 Declaration of the Receiver, the Declaration of Christopher D. Sullivan of Diamond McCarthy, and
 7 the Declaration of Fred Koenen of Schinner.

8 The Receiver has conferred with counsel for the Securities and Exchange Commission and is
 9 advised that they do not oppose the Motion. A stipulation with all parties was deemed impractical
 10 given, among other things, the entry of judgment against defendants and pending bankruptcy of
 11 defendant John Bivona. (L.R. 7-11(a)).

12 **II. Previous Fee Motions**

13 This is the fifth interim fee motion by the Receiver and her counsel. Fees and expenses have
 14 previously been granted as follows:

15 Order on First Interim Motion (Dkt. 485): Receiver fees of \$46,287.00 and costs of \$3,033.33;
 16 Diamond McCarthy fees of \$16,802.80 and costs of \$524.67 (fees were subject to 20% hold back).

17 Order on Second Interim Motion (Dkt. No. 515): Receiver fees of \$85,735.50 and costs of
 18 \$185.93; Diamond McCarthy fees of \$30,625.00 and costs of \$1,924.16 (fees were subject to 20%
 19 hold back).

20 Order on Third Interim Motion (Dkt. No. 537): Receiver fees in the amount of \$40,349.40 and
 21 costs of \$542.73; Diamond McCarthy fees of \$4,450.90 and costs of \$131.35 (fees were subject to
 22 20% hold back).

23 Order on Fourth Interim Motion (Dkt. No. 567: Receiver’s fees in the amount of \$50,187.30
 24 (subject to 30% hold back) and costs of \$27.00; Diamond McCarthy’s fees of \$12,550.00 (subject to
 25 30% holdback); Miller Kaplan fees of \$42,465.60 (subject to 20% holdback); Schinner & Shain fees
 26

27 _____
 28 ² Diamond McCarthy has agreed to a holdback of 20% of this amount, and thus seeks payment of
 \$25,963.20 at this time.

1 of \$5,044.96 (subject to 20% holdback). The Receiver has paid the amounts authorized for payment,
2 net of the holdbacks.

3 The Receiver is currently holding free and clear cash of \$412,602.18 (\$300,843.62 of which
4 was received during the second quarter pursuant to a settlement with the Bivona bankruptcy trustee).³

5 **III. Case Status**

6 The Receiver has continued to move forward the process of finalizing a distribution plan.
7 During the Motion Period, the Receiver revised the distribution plan and prepared the Motion for
8 Final Approval of Receiver's Plan of Distribution and for Order Approving Form and Manner of
9 Notice; and Opportunity to Serve on Investment Advisory Committee (Dkt. No. 570), which is
10 scheduled to be heard on May 13, 2020.

11 During the Motion Period, the Receiver obtained Court approval of a number of settlement
12 agreements. The Court approved the Receiver's settlement with Equity Acquisition Company Ltd.
13 ("EAC") regarding the resolution of all outstanding issues between EAC and the Receivership
14 estate. The Receiver also obtained Court approval of her settlement with the trustee of the John
15 Bivona bankruptcy estate and the Eliv Group regarding competing claims to bank accounts.

16 The claims administration has largely been completed. However, during the Motion Period,
17 the Receiver objected to the guaranty claims of Hsu and O'Leary and joined with the SEC in
18 objecting to the claims filed by Michele Mazzola and Joshua Cilano for management fees. The
19 Receiver has also prepared and filed a complaint against Ben Sabrin.

20 As of March 31, 2020, the receivership estate has \$412,602.18 in cash on hand in a
21 checking account, \$94,290.67 in money market account and \$502,395.56 in the segregated Anna
22 Bivona funds. There are known accrued expenses and unpaid expenses of \$120,738.49 and
23 holdbacks of \$219,553.18. Attached to the Declaration of the Receiver as Exhibit "6" is a financial
24 summary showing the cash status of the estate as of March 30, 2020. Funds in the amount of
25 \$92,960.55 representing the fourth quarter 2019 fees and expenses have been disbursed during this
26
27

28 ³ This amount is exclusive of the segregated Anne Bivona disgorgement funds.

period. The Standardized Fund Accounting Report required by the SEC for the first quarter 2020 is attached as Exhibit “7” to the Receiver’s declaration.

IV. The Receiver’s Fee Request

As detailed in the Declaration of the Receiver, pursuant to the Receiver’s proposal for her appointment, and in recognition of the efficiencies and benefits to the estate, the Receiver has established separate billing categories for services provided to address legal issues (2598-11- Case Administration; 2598-13 – Claims Administration/Objection; 2598-14 - Asset Analysis and Recovery; 2598-16- Plan Implementation) and a separate category for administrative services provided (2598-12- Receiver Administrative Services). For billing category 2598-12, the Receiver has agreed to charge \$130.00 per hour for herself and for administrative assistance. For the rest of the billing categories, the Receiver has discounted her hourly rate of \$675.00 to \$425.00, thereby generating significant savings to the estate. The billing statements itemizing the services provided and expenses incurred are contained in Exhibits “1-5” attached to the Declaration of the Receiver. The amounts for each category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	23.90	\$10,157.50	\$145.00
Administrative Services	26.60	\$3,573.50	n/a
Claims Administration/Objection	20.50	\$8,712.50	n/a
Asset Analysis and Recovery	37.80	\$16,065.00	n/a
Plan Implementation	89.50	\$36,550.00	n/a
TOTAL		\$75,058.50	\$145.00

V. Diamond McCarthy’s Fee Request

As detailed in the Declaration of Christopher D. Sullivan, Diamond McCarthy has established the following billing categories for tasks performed during the Motion Period (2622-11- Case Administration; 2622-13- Plan Implementation; 2622-15 Asset Analysis and Recovery). Services were primarily performed by partner Christopher D. Sullivan and senior counsel Stacey Pratt at discounted hourly rates with paralegal assistance. The billing statements itemizing the services provided and expenses incurred are attached as Exhibits “8-10” to the Declaration of Mr. Sullivan. The amounts for each category are as follows:

Matter	Hours	Fees	Expenses
Case Administration	28.70	12,181.50	\$34.66
Plan Implementation	17.40	7,395.00	n/a
Asset Analysis and Recovery	30.30	12,877.50	\$134.77
TOTAL		\$32,454.00	\$169.43

VI. Schinner Fee Request

Attached to the Declaration of Frederick Koenen as Exhibit "11" are the billing statements itemizing the amounts owed and the services performed by Schinner during the Motion Period. As is shown from the billing statements, Schinner performed 4.90 hours of services for a total of \$2,450.00 and incurred costs in the amount of \$622.06. The services performed by Schinner included advising the Receiver on securities law matters.

WHEREFORE, the Receiver requests entry of an order granting this Motion in all respects.

Dated: June 17, 2020

By: /s/Kathy Bazoian Phelps
Receiver